

No. 16214

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**United States Court of Appeals**  
**FOR THE NINTH CIRCUIT**

RICHARD WILLIAM BOYD,

Appellant,

*vs.*

UNITED STATES OF AMERICA,

Appellee.

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**BRIEF FOR APPELLANT**

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

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FILED

MAR - 2 1959



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**JURISDICTION**

This is an appeal from a judgment of conviction rendered and entered by the United States District Court for the Southern District of California, Central Division. [R. 6-7]<sup>1</sup> The District Court had jurisdiction under Title 18, § 3231, U. S. C. A. The indictment charged an offense against the Universal Military Training and Service Act

<sup>1</sup> Numbers appearing herein within brackets preceded by "R." refer to pages of the printed transcript of record filed herein.

(50 U. S. C. A. App. § 462). [R. 3-4] This Court has jurisdiction of this appeal under Rule 37 (a) (1) and (3) of the Federal Rules of Criminal Procedure because the notice of appeal was filed in the time and manner required by law. [R. 7-8]

### STATUTE INVOLVED

Section 12 (a) of the Act (50 U. S. C. A. App. § 462 (a)) provides:

. . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment . . .

### REGULATIONS INVOLVED

The Regulations involved are 32 C.F.R. § 1625.1 to § 1625.4 and 32 C.F.R. § 1625.11 to § 1625.14.

1625.1 Classification Not Permanent.—(a) No classification is permanent.

(b) Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, military, or dependency status, or in his physical condition. Any other person should report to the local board in writing any such fact within 10 days after having knowledge thereof.

(c) The local board shall keep informed of the status of classified registrants. Registrants may be questioned or physically or mentally re-examined, employers may be required to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.—32 C.F.R. § 1625.1.

1625.2 When Registrant's Classification May Be Reopened and Considered Anew.—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.—32 C.F.R. § 1625.2.

1625.3 When Registrant's Classification Shall Be Reopened and Considered Anew.—(a) The local board shall reopen and consider anew the classification of a registrant upon the written request of the State Director of Selective Service or the Director of Selective

Service and upon receipt of such request shall immediately cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant.

(b) The local board shall reopen and consider anew the classification of a registrant to whom it has mailed an Order to Report for Induction (SSS Form No. 252) whenever facts are presented to the local board which establish the registrant's eligibility for classification into Class I-S because he is satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning.—32 C.F.R. § 1625.3.

1625.4 Refusal to Reopen and Consider Anew Registrant's Classification.—When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required.—32 C.F.R. § 1625.4.

1625.11 Classification Considered Anew When Reopened.—When the local board reopens the registrant's



classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened.—32 C.F.R. § 1625.11

1625.12 Notice of Action When Classification Considered Anew.—When the local board reopens the registrant's classification, it shall, as soon as practicable after it has again classified the registrant, mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter.—32 C.F.R. § 1625.12.

1625.13 Right of Appeal Following Reopening of Classification.—Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification.—32 C.F.R. § 1625.13.

1625.14 Order to Report for Induction to Be Canceled When Classification Reopened.—When the local board has reopened the classification of a registrant, it shall cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant. If, after the registrant's classification is reopened, he is classified anew into a class available for service, he shall be ordered to report for induction in the usual manner.—32 C.F.R. § 1625.14.

## STATEMENT OF THE CASE

Appellant was charged by indictment alleging that he refused to be inducted into the armed forces of the United States on March 3, 1958. [R. 3-4] He pleaded not guilty and waived the right of trial by jury. He was tried and thereafter, on August 25, 1958, he was found guilty. [R. 5] Upon the trial of the case the only evidence received was appellant's Selective Service file. [R. 9-10] The pertinent parts of that file shall now be summarized.

Appellant Boyd registered on January 22, 1953. (F. 1-2)<sup>2</sup> On March 9, 1953, he filed the Selective Service questionnaire provided by the local board. (F. 5) Since he was not too "strong in the faith" at the time, he did not fill out Series XIV concerning conscientious objection to war. (F. 11, 49) On August 5, 1953, he was classified in I-A and was so notified on August 6, 1953. (F. 12)

The local board wrote several letters to the appellant after he failed to report for an armed forces physical examination, all of which were returned marked "unknown," "wrong address" or "left no address." (F. 12, 17, 21, 22-23, 25, 26-28, 32-33)

The order to report for induction dated September 24, 1957, commanding appellant to report on October 25, 1957 (F. 12, 34), was also returned to the local board by the post office marked "unknown." (F. 12, 38-39) On October 29, 1957, the local board received information from the induction station that the appellant had failed to report. (F. 12) A delinquent registrant report was thereupon sent to the United States Attorney. (F. 40-41)

On December 10, 1957, the appellant came to the local board office and provided his address. He was handed a dependency questionnaire which he thereupon filled out

<sup>2</sup> Numbers preceded by "F." appearing in parenthesis herein refer to the pages from the Selective Service file introduced into evidence by the Government. Such page numbers, written in longhand, appear at the bottom of each page of the file.

and filed. (F. 43-47) Upon his request he was issued a special form for conscientious objector with instructions to file it by December 15, 1957. (F. 12, 50) He stated to the board that the reason he had not certified that he was a conscientious objector was because he was "not as strong in my faith until recently" and "didn't know too much about it, that is, about sending in for forms." (F. 49)

On December 16, 1957, the special form for conscientious objector was filed. (F. 12, 50) It showed that appellant was conscientiously opposed to his participation in both combatant and noncombatant military service. (F. 50-55)

On January 6, 1958, the United States Attorney notified the local board that "it is agreeable with this office for you to act again in this case." (F. 56) On January 10, 1958, the United States Attorney informed the local board that it could "remove the above name [Richard William Boyd] from your Form 302," which is the record of delinquents maintained at the local board. (F. 57) He added that he was "in favor of immediate induction as a delinquent" of the appellant. (F. 57)

On February 12, 1958, the local board informed appellant that the information filed by him, including the special form for conscientious objector, had been considered by the local board and it was "of the opinion that the facts presented do not warrant the reopening or reclassification" of appellant's case. (F. 12, 62) The local board thereupon ordered appellant to report for induction, by sending to him a copy of the order dated September 24, 1957, to report for induction October 25, 1957, and stated that, in view of his delinquent status, he was required to report on February 28, 1958, for induction. (F. 13, 63) Appellant reported for, but declined to submit to, induction on February 28, 1958. (F. 13, 64)

The local board then sent to the State Director on March 6, 1958, the Selective Service file for attention and, among other things, said: "In view of the fact that the registrant has filed SS Form 150 claiming Conscientious Objection,

it would be appreciated if you review this case with reference to Local Board Memorandum No. 14.” (F. 13, 85-86) The local board, on March 7, 1958, again wrote to the State Director for clarification in view of the appellant’s having filed the special form for conscientious objector. (F. 88) The Director of Selective Service determined that appellant should be prosecuted. (F. 89-90) A delinquent registrant report was thereupon sent to the United States Attorney by the local board on April 4, 1958. (F. 13, 91-92)

### **QUESTION PRESENTED AND HOW RAISED**

The only question raised upon this appeal is whether the local board violated appellant’s rights to procedural due process of law by failing to reconsider appellant’s case *de novo*, reclassify him as though he had not theretofore been classified and mail to him a notice of classification following the issuance to him by the local board and his filing of the special form for conscientious objector, as required by Selective Service Regulations, Part 1625, all of which denied him his rights to a personal appearance and to an appeal to the appeal board.

### **SPECIFICATION OF ERROR**

The District Court erred in failing to grant the motion for judgment of acquittal duly made at the close of the Government’s case and renewed at the close of all the evidence. (R. 4, 9)

The appellant also complained of the action of the trial court in overruling the motion for judgment of acquittal in a motion for new trial duly filed. (R. 9-10)

## A R G U M E N T

The argument will be brief. The issuance to the appellant of the special form for conscientious objector after the order to report for induction was issued constituted a reopening of the classification. (*United States v. Underwood*, 151 F. Supp. 874 (E.D. Pa. 1955)). See also *United States v. Vincelli*, 215 F. 2d 210, 216 F. 2d 681 (2d Cir. 1954); *United States v. Packer*, 200 F. 2d 540 (2d Cir. 1952; reversed on other grounds, 346 U. S. 1, 1953); *Olvera v. United States*, 223 F. 2d 880 (5th Cir. 1955).

The issuance of the special form for conscientious objector does constitute a reopening of the case according to the holding of this Court.—*Knox v. United States*, 200 F. 2d 398 (9th Cir. 1952).

It was the duty of the local board to cancel the order to report for induction because the issuance of the special form for conscientious objector constituted a reopening of the case.—*Knox v. United States*, 200 F. 2d 398 (9th Cir. 1952); *United States v. Vincelli*, 215 F. 2d 210, 216 F. 2d 681 (2d Cir. 1954); *United States v. Underwood*, 151 F. Supp. 874 (E.D. Pa. 1955).

The Selective Service Regulations (32 C. F. R. § 1625.14) provide: "When the local board has reopened the classification of a registrant, it shall cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant. If, after the registrant's classification is reopened, he is classified anew into a class available for service, he shall be ordered to report for induction in the usual manner."

The order to report issued September 24, 1957, which was returned to the local board before the date commanding appellant to report on October 25, 1957, was made invalid and constituted no basis upon which the appellant could be thereafter ordered to report for induction as commanded in the letter of February 12, 1958, ordering him to report on February 28, 1958. (F. 40, 63)

The issuance of the special form for conscientious objector constituted a reopening (*United States v. Vincelli, supra; United States v. Underwood, supra*) so as to require the local board to cancel the order to report for induction and reprocess the appellant by notifying him of the classification, as required by Section 1625.12 of the Regulations. The appellant was denied his rights to a personal appearance pursuant to Section 1624.1 of the Regulations and his right to an appeal guaranteed by Section 1625.13 of the Regulations when he was treated as a delinquent upon failure to report for induction after his classification had been reopened by reason of the issuance of the special form for conscientious objector, pursuant to *United States v. Vincelli*, 215 F. 2d 210, 216 F. 2d 681 (2d Cir. 1954), and *United States v. Underwood*, 151 F. Supp. 874 (E.D. Pa. 1955).

It is submitted that the appellant was denied procedural due process of law through the failure of the local board to cancel the order to report for induction, formally reopen his classification and notify him of the new classification, so that he would have the rights to a personal appearance and appeal as guaranteed by the Regulations.

**CONCLUSION**

WHEREFORE, for the reasons above stated, the judgment of the court below should be reversed and it should be ordered that the motion for judgment of acquittal be sustained.

Respectfully submitted,

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